IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 9192 of 2007(T)

PETITIONER:

DIOCESE OF NEYYATTINKARA, REP. BY ITS DIOCEAN HEAD, BISHOP DR.VINCENT SAMUEL, AGED 55, R/AT BISHOP (H), NEYYATTINKARA, REP. BY THE MANAGER OF LITTLE FLOWER ESTATE FR.SIMON PETER, S/O.SELVAMUTH, AGED 51, PARANDODE, ARYANAD, PARISH PRIEST, ST.MARY'S CHURCH, PARANDODE, ARYANAD.

BY ADV. SRI.P.F.THOMAS (SR.)
SRISHIJU VARGHEESE
SRI.C.S.YESUDAS

RESPONDENTS:

1. ARYANAD PANCHAYAT, REPRESENTED BY ITS SECRETARY, ARYANAD PANCHAYAT, NEDUMANGAD.

2. RAJU, S/O. HARRIS, AGED ABOUT 45 YEARS, THEEYARIPARA THADATHARIKATHU HOUSE, KOKKOTTELA, SAMPUTHANGI, ARYANAD.

3. HARRIS, THEEYARIPARA THADATHARIKATHU HOUSE, KAKKOTTELA, SAMPUTHANGI, ARYANAD.

4. LAKSHMANAN, S/O. NARAYANAN NADAR, VALLIYANI, THOTTATHARIKATHU VEEDU, SAMBURATHANI, ARYANAD.

5. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY TO THE GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.NAGARAJ NARAYANAN
GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN
SRI.SAIJO HASSAN
SRI.A.S.SABU
SRI.V.SURESH
SRI.G.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the rough plan prepared by the Advocate Commissioner in O.S.No.130/05 of the Munsiff's court, Nedumangad.

Ext.P2: True copy of the FIR (in crime No.88/05) in C.C.No.151/05 of the Judicial First Class Magistrate Court, Nedumangad, dated 15.2.2005.

Ext.P3: True copy of the injunction order in I.A.830/05 in O.S.No.130/05 of the Munsiff's Court, Nedumangad dated 16.2.2005.

Ext.P4: True copy of representation address to the Hon'ble Chief Minister of Kerala, dated 2.3.2007.

Ext.P4: True copy of the commission report with rough plan in O.S.No.130/05 of the Munsiff's Court, Nedumangad, dated 28.2.2005.

Ext.P5: True copy of the Commission report with rough plan prepared by the Advocate Commissioner in O.S.No.130/05 of the Munsiff's Court, Nedumangad, dated 17.12.2005.

RESPONDENT'S EXHIBITS:

Ext.R1(a): True copy of plaint as O.S.No.155/05 filed by Sreedharan Pillai Chandran Nair and others before the Munsiff Court, Nedumangad.

Ext.R1(b): True copy of order dated 1.3.2005 in I.A.No.983/05 in O.S.No.155/05 passed by the Principal Munsiff Court, Nedumangad.

// True copy //

P.A. To Judge

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A.K.BASHEER, J.

W.P.(C)No.9192 OF 2007

Dated this the 9th day of July, 2007

JUDGMENT

Petitioner claims that he is the owner of a Rubber Estate within the territorial limits of respondent no.1/Panchayat. He had purchased a small parcel of land having an extent of 88 cents lying adjoining the southern boundary of the Estate in the year 2005. It is the case of the petitioner that after the purchase of the property he had erected fences along the boundary.

2. On February 13, 2005, when respondents 2 to 4 and some others trespassed into the small extent of the property purchased by him, he had lodged a complaint before the police. Ext.P2 FIR was registered by the police and investigation was completed. The case is now pending in C.C.151/05 on the file of the Judicial Magistrate of First Class, Nedumangad.

3. Petitioner had also instituted a suit as O.S.130/05 before the Munsiff Court, Nedumangad against respondent

no.2 to 4 to restrain them from trespassing into the property. The Munsiff court had issued Ext.P3 order of injunction in I.A.830/05 in the above suit. Petitioner contends that respondents 2 to 4 had violated the order of injunction and therefore a petition to prosecute them had been filed by him before the trial court. It is further contended by the petitioner that despite the order of injunction, respondents 2 to 4 had demolished the boundary fences and constructed a 4 meter wide road at a length of 37 ½ meters through his property.

4. Petitioner's grievance is that respondent no.1/Panchayat is aiding respondents 2 to 4. He apprehends that the Panchayat is likely to help respondents 2 to 4 and create some documents to show that there existed an old road in the property purchased by him in 2005. To be specific, the apprehension of the petitioner is that the Panchayat is likely to issue a declaration that there existed an old public road in that property. Panchayat is also likely to draw electric lines

through the other side of the road. It is in the above circumstances that the petitioner has preferred this writ petition with the following prayer:

> (a) direct the first respondent Panchayat to produce the documents in their possession if any in relation to any passage or pathway right across the property of the petitioner purchased by document No.305/2005 of SRO Aryanad and direct the first respondent from entering into the property or do anything over the pathway till the matter is settled or decided by the Munsiffs Court Nedumangad in O.S.No.130/2005 and forbear it from doing anything in relation to the property"

5. The above contention of the petitioner has to be considered in the light of the materials available on record and also the contentions raised by respondent no.2 in his counter affidavit.

6. According to respondent no.2, a public road existed in the property which was purchased by the petitioner in the year 2005. The property was purchased by the petitioner with the full knowledge that a public road ran through it. When the petitioner attempted to close down the road by use of force, the local people who had been using it objected to

the same. It is also contended by respondent no.2 that there are several residential building on either side of the road in question. Three of those residents have filed O.S.155/05 before the Munsiff Court, Thiruvananthapuram praying that the above road should not be allowed to be closed down. It is also stated by respondent no.2 in the counter affidavit that he had moved the District Court, Thiruvananthapuram to transfer the above suit to the Munsiff Court, Nedumangad to be tried along with O.S.130/05. Respondent no.2 has got a further case that the local people had approached the Panchayat to issue certified copies of the documents which would show that a public road ran through the property. But it is the allegation of respondent no.2 that petitioner being very influential and rich, had persuaded the Panchayat not to issue copies of those documents.

7. Though several opportunities have been given to the Panchayat to file its counter affidavit and to produce the relevant file, it has not been done so far.

8. Having perused the materials on record, I am satisfied that the petitioner has to necessarily seek his remedies before the civil court before which admittedly, the suit filed by him is pending. The question whether a road existed or not at the time when the petitioner purchased the property and also whether respondent no.2 to 4 had attempted to cut open a new road etc. are all disputed questions of fact which can be thrashed only in a civil court. Anyhow, this court under Article 226 of the Constitution need not consider disputed questions of fact. If the petitioner wants any relief against the Panchayat, I do not find any reason why the petitioner shall not implead the Panchayat in the suit and seek an appropriate direction from the civil court itself. As noticed already, respondent no.2 has obtained an order from the District Court, Thiruvananthapuram for transfer of O.S.155/2005 from the Munsiff Court, Thiruvananthapuram to the Munsiff Court, Nedumangad, to be tried along with O.S.130/2005. The Civil Court can direct

the Panchayat to produce the necessary documents in the two suits. Undoubtedly the Civil Court will be in a better position to tackle the issue by directing the parties to adduce oral and documentary evidence. In any view of the matter, I do not find any reason to entertain this writ petition before this court.

Writ petition fails. It is therefore dismissed.

A.K.BASHEER, JUDGE

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